

number of licenses that will be awarded to small entities in future auctions. However, four of the 16 winning bidders in the two previous narrowband PCS auctions were small businesses, as that term was defined. The Commission assumes, for purposes of this analysis that a large portion of the remaining narrowband PCS licenses will be awarded to small entities. The Commission also assumes that at least some small businesses will acquire narrowband PCS licenses by means of the Commission's partitioning and disaggregation rules.

69. *Rural Radiotelephone Service.* The Commission has not adopted a size standard for small businesses specific to the Rural Radiotelephone Service.¹⁴⁶ A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio System (BETRS).¹⁴⁷ The Commission uses the SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.¹⁴⁸ There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that there are 1,000 or fewer small entity licensees in the Rural Radiotelephone Service that may be affected by the rules and policies adopted herein.

70. *Air-Ground Radiotelephone Service.* The Commission has not adopted a small business size standard specific to the Air-Ground Radiotelephone Service.¹⁴⁹ We will use SBA's small business size standard applicable to "Cellular and Other Wireless Telecommunications," i.e., an entity employing no more than 1,500 persons.¹⁵⁰ There are approximately 100 licensees in the Air-Ground Radiotelephone Service, and we estimate that almost all of them qualify as small under the SBA small business size standard.

71. *Offshore Radiotelephone Service.* This service operates on several UHF television broadcast channels that are not used for television broadcasting in the coastal areas of states bordering the Gulf of Mexico.¹⁵¹ There are presently approximately 55 licensees in this service. We are unable to estimate at this time the number of licensees that would qualify as small under the SBA's small business size standard for "Cellular and Other Wireless Telecommunications" services.¹⁵² Under that SBA small business size standard, a business is small if it has 1,500 or fewer employees.¹⁵³

2. Cable and OVS Operators

72. *Cable and Other Program Distribution.* This category includes cable systems operators, closed circuit television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems, and subscription television services. The SBA has developed small business size standard for this census category, which includes all such companies generating \$12.5 million or less in revenue annually.¹⁵⁴ According to Census Bureau data for 2002, there were a total of

¹⁴⁶ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

¹⁴⁷ BETRS is defined in sections 22.757 and 22.759 of the Commission's Rules, 47 C.F.R. §§ 22.757 and 22.759.

¹⁴⁸ 13 C.F.R. § 121.201, NAICS code 517212.

¹⁴⁹ The service is defined in section 22.99 of the Commission's Rules, 47 C.F.R. § 22.99.

¹⁵⁰ 13 C.F.R. § 121.201, NAICS codes 517212.

¹⁵¹ This service is governed by Subpart I of Part 22 of the Commission's rules. See 47 C.F.R. §§ 22.1001-22.1037.

¹⁵² 13 C.F.R. § 121.201, NAICS code 513322 (changed to 517212 in October 2002).

¹⁵³ *Id.*

¹⁵⁴ 13 C.F.R. § 121.201, North American Industry Classification System (NAICS) code 513220 (changed to 517510 in October 2002).

1,191 firms in this category that operated for the entire year.¹⁵⁵ Of this total, 1,087 firms had annual receipts of under \$10 million, and 43 firms had receipts of \$10 million or more but less than \$25 million.¹⁵⁶ Consequently, the Commission estimates that the majority of providers in this service category are small businesses that may be affected by the rules and policies adopted herein.

73. *Cable System Operators.* The Commission has developed its own small business size standards for cable system operators, for purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide.¹⁵⁷ In addition, a "small system" is a system serving 15,000 or fewer subscribers.¹⁵⁸

74. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, also contains a size standard for small cable system operators, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1 percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed \$250,000,000."¹⁵⁹ The Commission has determined that there are approximately 67,700,000 subscribers in the United States.¹⁶⁰ Therefore, an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all its affiliates, do not exceed \$250 million in the aggregate.¹⁶¹ Based on available data, the Commission estimates that the number of cable operators serving 677,000 subscribers or fewer, totals 1,450. The Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed \$250 million,¹⁶² and therefore is unable, at this time, to estimate more accurately the number of cable system operators that would qualify as small cable operators under the size standard contained in the Communications Act of 1934.

75. *Open Video Services.* Open Video Service (OVS) systems provide subscription services.¹⁶³ The SBA has created a small business size standard for Cable and Other Program Distribution.¹⁶⁴ This standard provides that a small entity is one with \$12.5 million or less in annual receipts. The Commission has certified approximately 25 OVS operators to serve 75 areas, and some of these are currently providing service.¹⁶⁵ Affiliates of Residential Communications Network, Inc. (RCN) received approval to operate

¹⁵⁵ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 517510 (issued November 2005).

¹⁵⁶ *Id.* An additional 61 firms had annual receipts of \$25 million or more.

¹⁵⁷ 47 C.F.R. § 76.901(e). The Commission determined that this size standard equates approximately to a size standard of \$100 million or less in annual revenues. *Implementation of Sections of the 1992 Cable Act: Rate Regulation*, Sixth Report and Order and Eleventh Order on Reconsideration, 10 FCC Rcd 7393, 7408 (1995).

¹⁵⁸ 47 C.F.R. § 76.901(c).

¹⁵⁹ 47 U.S.C. § 543(m)(2); see 47 C.F.R. § 76.901(f) & nn. 1-3.

¹⁶⁰ See Public Notice, *FCC Announces New Subscriber Count for the Definition of Small Cable Operator*, DA 01-158 (Cable Services Bureau, Jan. 24, 2001).

¹⁶¹ 47 C.F.R. § 76.901(f).

¹⁶² The Commission does receive such information on a case-by-case basis if a cable operator appeals a local franchise authority's finding that the operator does not qualify as a small cable operator pursuant to § 76.901(f) of the Commission's rules. See 47 C.F.R. § 76.909(b).

¹⁶³ See 47 U.S.C. § 573.

¹⁶⁴ 13 C.F.R. § 121.201, NAICS code 513220 (changed to 517510 in October 2002).

¹⁶⁵ See <<http://www.fcc.gov/csb/ovs/csovsr.html>> (current as of March 2002).

OVS systems in New York City, Boston, Washington, D.C., and other areas. RCN has sufficient revenues to assure that they do not qualify as a small business entity. Little financial information is available for the other entities that are authorized to provide OVS and are not yet operational. Given that some entities authorized to provide OVS service have not yet begun to generate revenues, the Commission concludes that up to 24 OVS operators (those remaining) might qualify as small businesses that may be affected by the rules and policies adopted herein.

3. Internet Service Providers

76. *Internet Service Providers.* The SBA has developed a small business size standard for Internet Service Providers (ISPs). ISPs “provide clients access to the Internet and generally provide related services such as web hosting, web page designing, and hardware or software consulting related to Internet connectivity.”¹⁶⁶ Under the SBA size standard, such a business is small if it has average annual receipts of \$21 million or less.¹⁶⁷ According to Census Bureau data for 2002, there were 2,529 firms in this category that operated for the entire year.¹⁶⁸ Of these, 2,437 firms had annual receipts of under \$10 million, and 47 firms had receipts of \$10 million or more but less than \$25 million.¹⁶⁹ Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

77. *All Other Information Services.* “This industry comprises establishments primarily engaged in providing other information services (except new syndicates and libraries and archives).”¹⁷⁰ Our action pertains to VoIP services, which could be provided by entities that provide other services such as email, online gaming, web browsing, video conferencing, instant messaging, and other, similar IP-enabled services. The SBA has developed a small business size standard for this category; that size standard is \$6 million or less in average annual receipts.¹⁷¹ According to Census Bureau data for 1997, there were 195 firms in this category that operated for the entire year.¹⁷² Of these, 172 had annual receipts of under \$5 million, and an additional nine firms had receipts of between \$5 million and \$9,999,999. Consequently, we estimate that the majority of these firms are small entities that may be affected by our action.

D. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

78. Should the Commission decide to adopt any regulations to ensure that all providers of telecommunications services meet consumer protection needs in regard to CPNI, the associated rules potentially could modify the reporting and recordkeeping requirements of certain telecommunications

¹⁶⁶ U.S. Census Bureau, “2002 NAICS Definitions: 518111 Internet Service Providers” (Feb. 2004) <www.census.gov>.

¹⁶⁷ 13 C.F.R. § 121.201, NAICS code 518111 (changed from previous code 514191, “On-Line Information Services,” in Oct. 2002).

¹⁶⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, Table 4, Receipts Size of Firms for the United States: 2002, NAICS code 518111 (issued November 2005).

¹⁶⁹ *Id.* An additional 45 firms had annual receipts of \$25 million or more.

¹⁷⁰ U.S. Census Bureau, “2002 NAICS Definitions: 519190 All Other Information Services” (Feb. 2004) <www.census.gov>.

¹⁷¹ 13 C.F.R. § 121.201, NAICS code 519190 (changed from 514199 in Oct. 2002).

¹⁷² U.S. Census Bureau, 1997 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization),” Table 4, NAICS code 514199 (issued Oct. 2000). This category was created for the 2002 Economic Census by taking a portion of the superseded 1997 category, “All Other Information Services,” NAICS code 514199. The data cited in the text above are derived from the superseded category.

providers. We could, for instance, require that telecommunications providers require customer password-related security procedures to access CPNI data and/or encrypt CPNI data.¹⁷³ We could also require that telecommunications providers maintain more extensive records regarding CPNI data and report additional CPNI information to their customers and the Commission.¹⁷⁴ We tentatively conclude that the Commission should amend its rules to require carriers to certify no later than January 1st (or other date specified by the Commission) of each year, covering the preceding calendar year, and to file the compliance certificate with the Commission within 30 days.¹⁷⁵ We further tentatively conclude that carriers should attach to this annual section 64.2009(e) certification an explanation of any actions taken against data brokers and a summary of all consumer complaints received in the past year concerning the unauthorized release of CPNI.¹⁷⁶ These proposals may impose additional reporting or recordkeeping requirements on entities. We seek comment on the possible burden these requirements would place on small entities.¹⁷⁷ Also, we seek comment on whether a special approach toward any possible compliance burdens on small entities might be appropriate.¹⁷⁸ Entities, especially small businesses, are encouraged to quantify the costs and benefits of any reporting requirement that may be established in this proceeding.¹⁷⁹

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

79. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.¹⁸⁰

80. The Commission's primary objective is to develop a framework for protecting a customer's CPNI, regardless of the customer's underlying technology. We seek comment here on the effect the various proposals described in the Notice will have on small entities, and on what effect alternative rules would have on those entities.¹⁸¹ We invite comment on ways in which the Commission can achieve its goal of protecting consumers while at the same time impose minimal burdens on small telecommunications service providers. With respect to any of our consumer protection regulations already in place, has the Commission adopted any provisions for small entities that we should similarly consider here? Specifically, we invite comment on whether the problems identified by EPIC are better or worse at smaller carriers.¹⁸² We invite comment on whether small carriers should be exempt from

¹⁷³ See Notice at paras. 16, 19.

¹⁷⁴ See Notice at paras. 18, 23, 29, 30.

¹⁷⁵ See Notice at para. 29.

¹⁷⁶ See *id.*

¹⁷⁷ See Notice at paras. 16, 18, 19, 23, 29.

¹⁷⁸ See Notice at para. 30.

¹⁷⁹ See Notice at paras. 12, 19, 20, 23.

¹⁸⁰ 5 U.S.C. § 603(c).

¹⁸¹ See Notice at paras. 11, 12, 16, 18, 19, 23, 29, 30.

¹⁸² See Notice at para. 11.

password-related security procedures to protect CPNI.¹⁸³ We invite comment on the benefits and burdens of recording audit trails for the disclosure of CPNI on small carriers.¹⁸⁴ We invite comment on whether requiring a small carrier to encrypt its stored data would be unduly burdensome.¹⁸⁵ We solicit comment on the cost to a small carrier of notifying a customer upon release of CPNI.¹⁸⁶ We seek comment on whether the Commission should amend its rules to require carriers to file annual certifications concerning CPNI and whether this requirement should extend to only telecommunications carriers that are not small telephone companies as defined by the Small Business Administration, and whether small carriers should be subject to different CPNI-related obligations.¹⁸⁷

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

81. None.

¹⁸³ See Notice at para. 16.

¹⁸⁴ See Notice at para. 18.

¹⁸⁵ See Notice at para. 19.

¹⁸⁶ See Notice at para. 23.

¹⁸⁷ See Notice at paras. 29-30.

**STATEMENT OF
CHAIRMAN KEVIN J. MARTIN**

Re: *Implementation of the Telecommunications Act of 1996; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information, CC Docket No. 96-115, RM-11277*

With this Notice of Proposed Rulemaking, we ask how we can better protect customers' private telephone records from unauthorized disclosure. This item responds directly to the petition filed with the Commission by the Electronic Privacy Information Center (EPIC). In its Petition, EPIC expresses concerns about the sufficiency of carrier practices relating to customer proprietary network information (CPNI) in light of numerous reports that online "data brokers" and private investigators are engaged in the sale of customers' personal telephone records. EPIC claims that these data brokers are obtaining unauthorized access to CPNI through various possible means, including through "pretexting" – that is, by pretending to be a customer seeking access to that customer's own telephone records. Today, we seek comment on whether additional Commission rules are necessary to strengthen the safeguards currently in place to protect consumers' sensitive telephone record data. I support this Notice because I am deeply concerned about reports of companies trafficking in personal telephone records and I want to thank my fellow Commissioners for considering this Notice expeditiously.

STATEMENT OF
COMMISSIONER MICHAEL J. COPPS

Re: *Implementation of the Telecommunications Act of 1996; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information, CC Docket No. 96-115, RM-11277*

American consumers deserve the security of knowing that their personal phone records are not for sale. By starting this proceeding, we pledge to protect consumers from unscrupulous data brokers who have built a business on selling information about our private conversations. The Commission also commits to adjusting its rules to further safeguard privacy and prevent the unauthorized disclosure of customer proprietary network information (CPNI). For these reasons, I am pleased to support today's effort.

Privacy issues must always be on the Commission's front burner – but sometimes they languish. We have a three-and-a-half-year-old Notice of Proposed Rulemaking on CPNI safeguards and enforcement that needs to be acted on. We have a three-year-old proceeding on the dissemination of CPNI to unaffiliated third parties, initiated by a petition from the Arizona Corporation Commission, that also has stalled. And last year, we reclassified wireline broadband Internet access services, but left for another day the chilling question of whether or not privacy protections followed this regulatory remix. It's time to move ahead. I hope today we begin a new chapter.

We live in a day and age where our cherished right to privacy suffers from a daily fusillade of data gathering. Companies can monitor what we do, stores can study what we buy, technologies can track what we watch, see and hear. Consumers rightfully expect that regulatory agencies like this one will do something to protect them from this bombardment, to give them a measure of confidence that not every aspect of their personal information is available to the highest bidder.

**STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN**

Re: *Implementation of the Telecommunications Act of 1996; Petition for Rulemaking to Enhance Security and Authentication Standards for Access to Customer Proprietary Network Information, CC Docket No. 96-115, RM-11277*

I am very pleased that we open this rulemaking to address an issue of momentous personal importance to American consumers: the troublesome proliferation of telephone call records being made available on the Internet without customers' knowledge or consent. Last summer, a watchful public interest group, the Electronic Privacy Information Center (EPIC), alerted the FCC to this trend and filed a petition asking us to tighten our rules for protecting consumer call records. We take an important step here by granting EPIC's petition and issuing this Notice of Proposed Rulemaking to find ways to tighten our rules and provide greater security for these sensitive consumer records.

Telephone call records can include some of the most private personal information about an individual. Finding out who people are calling and for how long can be like picking someone's brain about their friends, plans or business dealings. Unauthorized access to call records is a highly invasive intrusion into both the personal and professional lives of consumers. Disclosure of these records is far more than a mere annoyance; indeed, it can lead to tragic consequences.

Congress recognized the sensitivity of this information in the Telecommunications Act of 1996 when it prohibited phone companies from using or disclosing customer proprietary network information without the customer's approval. It charged the Commission with enforcing this privacy protection and the Commission has previously adopted a set of rules designed to ensure that telephone companies have effective safeguards in place.

Telephone companies are required to have firewalls in place to protect consumers' private information but instead these records are blazing all over the Internet, available on numerous web sites even as we issue this Notice. I appreciate the recent efforts of several phone companies to take legal action against data brokers. This is an important step to shutting these data brokers down. Still, the Commission must also take immediate steps to ensure that we have sufficiently strong consumer privacy rules in place and that phone companies are employing effective safeguards to shield this data from harm. So, our efforts here to strengthen our rules are critical and time sensitive. We ask the right questions in this Notice, and I'm glad that we once again seek comment on how to protect consumer privacy as communications migrate to broadband and IP platforms. Our challenge now will be to move quickly to shut the tap on this information drain.

I also support our efforts to bring swift enforcement action against companies that are violating our rules. Even as we look to improve our rules and as Congress considers additional safeguards, we must use our existing authority to quickly address abuses of this private information.